In the High Court of Punjab & Haryana at Chandigarh

FAO No.717 of 1996 (O&M)

Date of decision: 11.10.2006

Smt Santosh Verma and others Vs. Ram Kanwar and others

CORAM: HON'BLE MR. JUSTICE UMA NATH SINGH

Present: Mr. O.P.Goel, Sr. Advocate with Ms Mamta Bhatti, Advocate, for the appellants

Mr. S.K.Monga, Deputy Advocate General (Haryana) for respondent No.2.

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UMA NATH SINGH, J.

This F.A.O. by the claimants for enhancement of compensation amount arises out of an award dated 12.9.1995 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Sonepat, in Claim petition No. 74 of 1994, awarding a sum of Rs. 3 lacs with 12% interest per annum in death case of a 45 years old industrialist. It appears that the accident took place on 26.6.1994 at about 9.30 a.m. when the deceased had left Sanjeevan Research Laboratory, for collecting money. Having done the job, he was returning home and was present at place known as Bus stop, Barmalik (Malikpur). The offending vehicle being a Haryana Roadways bus (HYS-7383) came from Delhi side and crushed the deceased to death due to rash and negligent driving.

Learned counsel for the appellants submitted that the deceased was an income-tax assesee. His two income tax returns for the year 1993-94 and 1994-95 (Ex.P.8 and P.9) disclosed that his earning was around Rs. 50,000/- per annum. On the basis of these income tax returns, learned counsel submitted that the deceased was earning around Rs. 4500/-. Smt.

Santosh (PW.1), widow of the deceased and one of the claimants, in her cross-examination while answering a suggestion given by the respondent-State has answered as " It is wrong to suggest that he was having no income" more than 4000/-". Thus the income of the deceased appears to be Rs. 4000/-. The claimants include the aged parents, widow of 41 years and two minor children being a daughter of 15 and a son of 11 years. Learned counsel also urged that the minor daughter has suffered a paralytic attack causing 70 per cent permanent disability and the son is a heart patient who has been advised an operation to install a pacemaker. Leaned counsel, thus, submitted that the deduction of 1/3rd towards personal expenses is also on higher side. The deceased was aged 45 years but a lower multiplier of 12 has been applied.

On the other hand, learned State counsel submitted that the income tax returns for two years would not form the basis to assess the earning and it was for the appellant to prove the income of the appellant beyond 3,000/-.

On due consideration of rival submissions, I am of the view that the impugned award needs to be interfered. The income tax returns can not be said to be unreasonable and excessive for the income shown therein is around Rs. 4000/- when the deceased was running a plastic manufacturing for the past 20 years duly registered with the Commercial Tax Department. Thus, I am of the view that the income of the deceased can be safely assessed at Rs. 4000/- per month. As regards the use of multiplier of 12, I am not inclined to interfere in view of the judgment of Hon'ble the Apex Court reported in (2005) 6 Supreme Court Cases 236 (**T.N State Transport Corporation Ltd**. v. **S. Rajapriya and others**). However,

looking to the fact that both the children being minors, require proper medical care, I deem it expedient in the interest of justice to deduct 1/4th of the total income towards personal expenses. As such, after deduction of 1/4th from the monthly income of Rs. 4000/-, the monthly dependency would come to Rs.3,000/- which on being multiplied by 12 would come to Rs. 36,000/- as annual dependency. As the tribunal has applied the multiplier of 12, the total dependency would come to Rs.4,32,000/-. Further, it appears that the claimants have not been awarded any amount towards the loss of estate. Accordingly, on that count, an amount of Rs. 2000/- is awarded. Thus, total compensation comes to Rs. 4,34,000/-. The enhanced amount of R. 1,34,000/- shall carry an interest @ 6 per cent p.a. From the date of application. . Thus, the FAO is allowed in part.

October 11, 2006 **(UMA NATH SINGH)**
dsg **JUDGE**

Whether refer to Reporter: Yes / No